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No. 80-2197

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF ALABAMA, Ex Rel. Charles A. Graddick, as Attorney General of the State of Alabama,

Petitioner

v.

TENNESSEE VALLEY AUTHORITY, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CHARLES A. GRADDICK
ATTORNEY GENERAL OF
THE STATE OF ALABAMA

EDWARD E. CARNES
ASSISTANT ATTORNEY
GENERAL OF THE STATE
OF ALABAMA

Counsel of Record

Office of Attorney
General
250 Administrative Bldg.
64 N. Union Street
Montgomery, Alabama
36130

(205) 834-5150

QUESTION PRESENTED

Does the principal office provision of §8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a), require that the Tennessee Valley Authority's headquarters be located in the immediate vicinity of Muscle Shoals, Alabama?

PARTIES

In addition to the names contained in the caption, appellants-defendants in the court below (respondents here) include: S. David Freeman, as chairman of TVA's Board of Directors; Richard M. Freeman, as a Member of TVA's Board of Directors' and the Third Member of TVA's Board of Directors, to be further identified later. The names of all other parties are included in the caption.

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OPINIONS BELOW

1. The opinion of the United States District Court for the Northern District of Alabama, holding that the principal office provision of §8(a) of the TVA Act of 1933 requires that TVA's headquarters be located in the vicinity of Muscle Shoals, Alabama, is reported as State of Alabama v. TVA, 467 F. Supp. 791 (N.D. Ala. 1979), and is reproduced as Appendix A hereto, pp. 1a-38a, infra.[1]

2. The opinion of the United States Court of Appeals for the Fifth Circuit,

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[1]The appendices to this petition are separately bound pursuant to Rule 21.1(k).

There are two volumes of appendices. The first volume, containing the materials required by Rule 21.1(k)(i) through (iii), consists of Appendices A - E. The second volume, submitted pursuant to Rule 21.1(k)(iv) contains Appendix F, which is a discussion of the legislative history and post-enactment developments concerning the principal office provision of the TVA Act.

reversing the district court's decision, is reported as State of Alabama v. TVA, 636 F. 2d 1061 (5th Cir. 1981), and is reproduced as Appendix C hereto, pp. 42a-74a, infra.

JURISDICTION

The judgment and initial opinion of the Court of Appeals for the Fifth Circuit was issued on February 13, 1981. See Appendices C and D, pp. 42a-76a, infra. The State of Alabama's petition for rehearing was denied on April 2, 1981. See Appendix E, p. 78a, infra.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1), this being a petition for a writ of certiorari seeking review of a court of appeals decision in a civil case.

CONSTITUTIONAL, STATUTORY, AND

RULE PROVISIONS INVOLVED

1. Section 8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a), which provides:

> The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

2. Section 2(e) of the TVA Act of 1933, 16 U.S.C. §831a(e), which provides in relevant part:

> Each member of the Board, in addition to his salary, shall be permitted to occcupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. ...

STATEMENT OF THE CASE

The Facts

TVA headquarters, administrative headquarters, and executive offices are located in Knoxville, Tennessee. (R. 45-46, 49-50, 242-245)[2] TVA's General Manager is "the principal TVA administrative officer", and his office is located in Knoxville. (R. 46, 109-111, 242-243) The offices of TVA's Directors, who have the authority to "direct the exercise of all the powers of the Corporation," are in Knoxville. (R. 45-46, 245) Knoxville is where the largest number of TVA's administrative staff are located. (R. 48-49, 161, 246)

TVA has a room in the National Fertilizer Development Center in Muscle

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[2]References to "R" are to the record on appeal in the court below.

Shoals which it refers to as a "meeting room maintained by TVA at Muscle Shoals for the purpose of providing a site for meetings of the Board of Directors." (R. 10) There are four such meeting rooms, only one of which is located at Muscle Shoals. (R. 54, 61) The meeting room is used for other TVA business and is occasionally made available for use by the public. (R. 61) Prior to the filing of this lawsuit, the room at Muscle Shoals had been used only one time for a TVA Board meeting, and that was more than 12 years before the lawsuit. (R. 54-55, 61-62) Between the time of that last Board meeting in Muscle Shoals an the filing of this lawsuit, two hundred and forty-five Board meetings were held elsewhere, most of them in Knoxville. (R. 54-55)

TVA's Board has formal meetings twice monthly, virtually all of which are held in Knoxville. (R. 53-54) In the year preceding the filing of this lawsuit, one such meeting was held in Chattanooga, Tennesseee, and the remainder were held in Knoxville. (R. 54) Prior to the filing of this lawsuit, an estimated more than a thousand formal Board meetings had been held.[3] Only seven, or less than 1% had been held at Muscle Shoals. (R. 254) The last one held there before this lawsuit was filed was held in 1965. (R. 254)

Service of legal process on TVA is ordinarily done in Knoxville. (R. 56-57, 253) Of the forty-six lawsuits filed

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[3]Forty-three years and ten months, or 526 months, are involved. Meetings are held twice monthly (R. 53), and 526 x 2 = 1,052 meetings.

against TVA in the twelve months prior to the filing of this one, process was served in Muscle Shoals in only two of them. (R. 57) In one of those two, service was also made contemporaneously in Knoxville, and in both of them the Muscle Shoals service was accepted by Public Safety officers who simply forwarded it to Knoxville. (R. 56-57, 253) The process in this lawsuit was served and accepted in Knoxville. (R. 56-57).

A patent attorney working in the National Fertilizer Development Center at Muscle Shoals has authority to accept service of process by virtue of the fact that he is one of the 56 attorneys in TVA's Division of Law. (R. 56, 58, 251) The other 55 attorneys, with identical authority, are located in Knoxville. (R. 56) It has been so long since the patent

attorney in Muscle Shoals accepted service of process that he could not remember the last time. (R. 253)

The patent attorney in Muscle Shoals is one of 12 Assistant Secretaries to the Corporation. (R. 247-248) The other 11 are located in Knoxville, as is the Secretary to the Corporation. (R. 56, 59, 247-248) The patent attorney spends at least 99% of his time on duties other than those of an Assistant Secretary to the Corporation. (R. 58-59) The corporate resolution appointing him an Assistant Secretary to the Corporation and delineating his authorities and duties as such does not mention the principal office. (R. 58, 194) Nor does TVA's relevant organizational bulletin describing the responsibility of that position mention the principal office. (R. 112.5) The duties of an

Assistant Secretary to the Corporation do not include accepting service of process. (R. 112.5, 194, 248, 251)

Duplicate original sets of Board minutes are kept in Knoxville as well as Muscle Shoals. (R. 55-56) Knoxville is the only place where TVA keeps a complete set of reports which the Comptroller General has issued after auditing it. (R. 63-64, 242) TVA has four corporate seals: two in Knoxville, one in Chattanooga, and one at Muscle Shoals. (R. 59-60) The person in charge of the corporate seal at Muscle Shoals estimates that it has been six to eight years since he used it. (R. 60, 254)

TVA claims that the patent attorney whose office is located in the National Fertilizer Development Center Building at Muscle Shoals is in charge of its principal office, and that it is located

in that same building. (R. 10) However, TVA's telephone directory does not list a principal office, nor does its listing for the patent attorney indicate that he has anything to do with the principal office. (R. 254-255) The National Fertilizer Development Center Building has a building directory in its lobby that lists the offices contained in it. (R. 256) That directory does not indicate that the principal office is located there. (R. 256-257)

The District Court Proceedings

In 1977, Alabama filed a complaint and amended complaint in the district court alleging that TVA was violating the principal office provision of §8(a) of the TVA Act by not locating its headquarters, administrative headquarters, and executive

offices in the immediate vicinity of Muscle Shoals, Alabama. (R. 1-6, 267-274) The relief sought was a declaratory judgment and an injunction against continued violation of the Act. (R. 5-6, 273-274) The district court had jurisdiction under 28 U.S.C. §1331.

TVA filed a motion for summary judgment, which in addition to joining issue on the merits attacked Alabama's standing and claimed the lawsuit was barred by the doctrine of res judicata. (R. 8-9, 282-283) After taking discovery on the merits, Alabama cross-moved for summary judgment. (R. 276)

In 1979, the district court entered an order denying TVA's motion and granting Alabama's. The order declared that TVA was required by law to locate and maintain its headquarters in the immediate vicinity of Muscle Shoals, Alabama, and the order

enjoined TVA from locating or maintaining its headquaraters in any other place. (R. 305-306) Appendix B, pp. 39a-41a, infra.

The district court issued a memorandum opinion to accompany its order. That opinion is published as State of Alabama v. TVA, 467 F. Supp. 791 (N.D. Ala. 1979), and is reproduced as Appendix A to this petition, pp. 1a-38a, infra. The district court opinion explained that the State of Alabama had standing to raise the issue and that it was not barred by the doctrine of res judicata. See, pp.2a-21a, infra. The opinion also explained that the plain meaning of the principal office provision of §8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a), requires a finding that the enacting Congress intended TVA to locate its headquarters in the immediate

vicinity of Muscle Shoals, Alabama, and even if that language were considered to be ambiguous the employment of other means of statutory interpretation dictate the same result. See, pp. 26a-38a, infra.

The district court entered a conditional stay order pending appeal. (Supplemental Record on Appeal of March 25, 1979).

The Court of Appeals Proceedings

In 1981, the United States Court of Appeals for the Fifth Circuit entered a judgment reversing the district court's order. See, Appendix D, pp. 75a-76a, infra. That judgment was accompanied by an opinion which is published as State of Alabama v. TVA, 636 F. 2d 1061 (5th Cir. 1981), and is reproduced as Appendix C to this petition, pp. 42a-74a, infra.

The court of appeals opinion affirmed the district court's holdings that Alabama had standing to bring the lawsuit and that the lawsuit was not barred by res judicata, pp. 45a-47a, infra. However, the court concluded that the meaning of the key language in the statute was ambiguous. See pp.48a-49a, infra. Employing what it called "familiar but nevertheless slippery tools of statutory construction," p. 49a, infra, the court of appeals concluded that the Act's requirement that TVA's principal office be located in Muscle Shoals did not mandate the location of its headquarters. See, pp. 49a-74a, infra.

REASONS FOR GRANTING THE WRIT

I.

This Case Involves an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court

The federal question involved in this case concerns the proper interpretation of the principal office provision contained in section 8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a). That provision expressly states that:

> The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama.

The issue is whether "principal office" means headquarters. If it does, as Alabama maintains and the district court concluded, then TVA is in violation of the law and has violated it for more than

forty years. There are three independently adequate reasons why this Court should address and settle the issue.

A. The Question is An Historically Important One

Appendix F to this petition, pp. 82a-173a, infra, contains a discussion of the legislative history of the principal office provision of the TVA Act. As discussed therein, the dispute over the meaning of this important federal statutory provision has raged for nearly a half century.

The earliest written evidence of the dispute dates back to 1934. In that year, then-Senator Hugo Black of Alabama began a two-year exchange of letters with the Chairman of TVA's Board of Directors in which Senator Black, who was instrumental

in passage of the legislation, vehemently declared that "the establishment of headquarters at Knoxville is in plain, open, and palpable violation of law." See, p.127, infra.[4] The controversy resulted in a letter from President Roosevelt, drafted by TVA, to Senator Black. See, State of Alabama v. TVA, 636 F. 2d at 1067 n. 9, p. 62a, infra.

After Senator Black became Justice Black and was thereby removed from the dispute, disagreement over the meaning of the principal office provision continued. It became part of the subject matter of a joint congressional committee investigation in 1938 and 1939, which is discussed on pp. 137a-147a, infra. That investigation resulted in a majority

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[4]The relevant portions of Senator Black's letters and TVA's replies, are reproduced on pp. 121a-131a, infra.

report which sided with TVA, but acknowledged a "substantial difference of opinion on the subject," and recommended that Congress consider enacting clarifying legislation, pp. 144a-147a, infra.[5] A minority report emphatically concluded that the principal office provision mandated the location of TVA's headquarters and that TVA was openly violating that mandate, pp. 146a-147a, infra.

The dispute was the subject of comment by various congressmen over the years, pp. 131a-133a and 162a-172a, infra, with even some Tennessee congressmen acknowledging that TVA was violating the clear meaning of the principal office provision, pp. 162a-164a, and 170a-171a,

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[5]For reasons discussed on pp. 147a-161a, infra, Congress never enacted clarifying legislation on the subject.

infra. Over the years, Tennessee congressmen have attempted to have Congress ratify TVA's actions by amending the principal office provision -- the earliest attempt was in 1945 and the latest in 1979 -- but the language has not been changed and the dispute remains. See, pp. 162a-173a, infra.

The controversy also has its history in court. Forty-two years ago a group of Alabama citizens sought to have the issue decided through a citizen-taxpayers lawsuit which resulted in the opinion published as Frahn v. TVA, 41 F. Supp. 83 (N.D. Ala. 1941), and discussed on pp. 133a-136a, infra. In that case, the court said that if felt "constrained to say that there may have been an interpretation placed upon the [principal office] provision of the Tennessee Valley

Authority Act which was not intended when the Act was adopted by Congress, and doubtlessly, the selection of the personnel of the Board of the Tennessee Valley Authority very greatly influenced the adopted interpretation," but concluded that the citizen taxpayers lacked standing to raise the issue. See, pp. 135a-136a, infra; State of Alabama v. TVA, 467 F. Supp. 791, 796-797 (N.D. Ala. 1979), aff'd on that point but rev'd on other grounds, 636 F. 2d 1061, 1063-1064 (5th Cir. 1981), pp.19a-20a, and 46a-47a, infra.

Then, in 1977, the State of Alabama, which did have standing to raise the principal office issue, brought this lawsuit; the district court decided the issue in Alabama's favor, but the court of appeals sided with TVA.

In summary, the federal question concerning the proper interpretation of

the principal office provision of the TVA Act of 1933 is an historically important one over which congressmen and lower courts have disagreed for nearly a half century. This Court can and should write a definitive final chapter in the matter by granting certiorari and addressing the issue.

B. The Economic Interests Involved Are Significant

In the "Injury Asserted" part of its amended complaint, Alabama alleged that TVA's failure to locate its headquarters in the vicinity of Muscle Shoals, Alabama, had cost the State of Alabama "millions of dollars in state tax revenues" and had damaged its economy by depriving the state of "thousands of jobs and many millions of dollars in payroll and other expenditures and secondary economic benefits." (R. 267-274); State of Alabama v. TVA, 467 F.

Supp. 791, 794-795 (N.D. Ala. 1979), p. 7a, infra. TVA did not dispute those factual allegations. (R. 43-44, 269-270, 280-281, 319); State of Alabama v. TVA, 467 F. Supp. at 795, pp. 12a-13a, infra.

At a minimum, TVA's headquarters consists of its Board of Directors, Office of the General Manager, and departments of Law, Personnel, and Finance -- all of which are located in Knoxville, Tennessee. According to the latest figures filed in the district court by TVA, those administrative units have a total annual payroll of more than $32,000,000.00, and a total annual budget of more than $60,000,000.00.[6]

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[6] One of the conditions of the stay pending appeal issued by the district court was a requirement that TVA file semi-annual status reports with the court concerning certain information. The payroll and budgetary figures referred to are contained in TVA's March 1981 status report.

The economic stakes are high and the injury which Alabama has suffered and continues to suffer because of TVA's failure to follow the statutory mandate are enormous. That is the second independently adequate reason why the federal question involved is sufficiently important for this Court's review.

C. The Principle Involved Is Of Great Importance

The third reason why this Court should grant certiorari is that the ultimate questions involved are worthy of this Court's attention. It may seem odd that Alabama should even attempt what appears to some to be such an impractical thing, and all in the name of vindicating one sentence of a law laid down a half

century ago and disobeyed ever since by one of this country's most powerful agencies. From the beginning of this lawsuit, TVA has never missed an opportunity to suggest how impractical it would be to obey the law if the law were as Alabama argues it is.

TVA's main line of defense has been that "principal office" does not mean headquarters, but that has not been its only defense. TVA's fallback position has been that even if the 1933 Congress intended to mandate that TVA locate its headquarters in Muscle Shoals, that intent is archaic, outmoded, and ridiculously impractical in view of the imperial edifices that the barrons of TVA have now ensconced themselves in (through leaseholds) in Knoxville. TVA argued below that it had the right and power to misinterpret the law, so long as its

misinterpretation was "reasonable." State of Alabama v. TVA, 636 F. 2d 1061, 1064-1065 (5th Cir. 1981), pp. 50a-52a, infra.

TVA has consistently missed the point. The point is that the law should be obeyed, or it should be changed. No other alternative is proper in our system whose central ideal is the principle of rule by law. Neither TVA nor any other bureaucracy has any license to disobey the law "reasonably." There was more involved in TVA v. Hill, 437 U.S. 153 (1978), than the continuned existence of a minnow, and there is more involved in this lawsuit than the location of some buildings.

Senator Lister Hill, who co-authored the TVA Act of 1933, described TVA's location of its headquarters in Knoxville as "nothing more or less, to be frank about the matter, than a very studied and

willful violation of the express language of the statute." Hearings Before the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong., 3d Sess., at 5233 (1938). He had this to say about the broader questions raised:

> I shall not delay you further, but I am wondering where a policy under which a government agency does not carry out the law, does not live up to the spirit and language of the statute, would lead us? With all of these multitudinous agencies and bureaus of the Government, if they are to willfully evade or violate the law, and consult their own personal pleasures or whims or desires, rather than the express will and direction of the Congress, where will we go? Id. at 5226.

Those are the ultimate questions in this lawsuit, and this Court should address them.

II. The Court of Appeals Incorrectly Decided the Federal Question

A. The Court of Appeals Ignored Important Evidence Concerning the Plain Meaning of the Term "Principal Office"

The district court concluded that the "principal office" language of §8(a) of the TVA Act of 1933, "is plain and unambiguous and that it clearly means the main headquarters of the corporation..." State of Alabama v. TVA, 467 F. Supp. at 798, pp. 27a-28a, infra. In overruling the district court on this point, the court of appeals ignored important evidence which establishes that "principal office" does plainly mean headquarters.

TVA's own usage establishes that when used to describe corporate offices or officers, "principal" means chief, main, or head. TVA refers to its General

Manager as "the principal TVA administrative officer." (R. 46, 152, 244) It proclaims Knoxville the location of its "principal administrative office." (R. 244-245) And a formal TVA resolution denotes Knoxville as the location of "the principle office of the legal department." See, p. 115a, infra.

There is other evidence that "principal office" as used in §8(a) of the Act plainly means headquarters. The General Accounting Office interpreted the provision to refer to the legally required location of TVA headquarters. It did so in a formal finding in its 1934 audit of TVA and again in testimony before a congressional committee in 1938. See, pp. 116a-120a, infra. The Justice Department also officially advised another congressional committee that §8(a)'s principal office meant headquarters. See,

pp. 167a-169a, infra. Senator Hugo Black thought the language plain enough to angrily label TVA's location of its headquarters in Knoxville, a "plain, palpable and open violation of the law." See, pp.124a-and 127a, infra.

Congressmen from other states have also recognized the plain meaning of §8(a). For example, a Kentucky congressman said on the floor of the House that TVA's location of its headquarters in Knoxville was "utter disobedience of the mandate of Congress," and explained that, "I do not care where they keep their office except that they ought to be made to obey the law." See, pp. 131a-133 a, infra. The meaning is so plain that even Tennessee's own congressmen have admitted over the years that §8(a) requires TVA's headquarters to be located in the Muscle Shoals vicinity. Senator McKellar candidly

admitted this, see, pp. 162a-164a, infra, as did Knoxville's own representative Howard Baker. See, pp.170a-171a, infra.

This Court has consistently held that, absent strong reasons to the contrary, a statute should be interpreted according to its plain meaning. United States v. Apfelbaum, 445 U.S. 115, 121 (1980); United States v. Clarke, 445 U.S. 253, 254 (1980); Burns v. Alcala, 420 U.S. 575, 580-581 (1975).

B. The Court of Appeals Misinterpreted the Significance of the Old Delaware Corporation Statute, Overlooked the Importance of the Pre-enactment Federal Precedents, and Misread an Important Treatise

In interpreting "principal office" the Court of Appeals placed great weight on the fact that the old Delaware

corporation statute required corporations to maintain a "principal office or place of business" in that state, yet relatively few Delaware corporations actually located their headquarters in that state. State of Alabama v. TVA, 636 F. 2d at 1065, pp. 54a-55a, infra. From that, the court below concluded that "principal office" did not mean headquarters.

That conclusion is a non sequiter stemming from the fact that the court below failed to recognize that "principal office or place of business" is obviously not the same thing as "principal office." If it were, there would be no point in adding the last four words to the phrase. The old Delaware provision meant that if a corporation did not maintain its headquarters ("principal office") in Delaware, then it must maintain "a place of business" there -- any place of

business, including a purely formal place whose only business was acceptance of service of process. Therefore, the court below misinterpreted the significance of the old Delaware corporation statute to this lawsuit.

In any event, the issue in this lawsuit is not the meaning of any particular phrase used in the corporation law of Delaware or of any other state. Rather, the issue is what the term "principal office" means as it is used in the TVA Act of 1933. Far more relevant than any state court statutes or precedents are the federal precedents existing at the time that Congress passed the TVA Act. In 1933, there were two and only two cases interpreting the meaning of "principal office" as used in a federal statute. They were Peters v. Detroit & Cleveland Nav. Co., 24 F. 2d 454, 455

(W.D. Ny. 1927); Caceres v. United States Shipping Bd., 299 F. 968, 970 (E.D. Ny. 1924). Both cases emphatically held that "principal office" as a federal statutory term means the actual headquarters of the corporation. See, State of Alabama v. TVA, 636 F. 2d at 1065-1066, pp. 56a-57a, infra. The Peters and Caceres cases are important, because a "legislative body generally uses a particular word with a consistent meaning in a given context," Erlenbaugh v. United States, 409 U.S. 239, 243 (1972), and when Congress in a later act uses a phrase which has been ascribed a particular meaning in an earlier federal act, Congress must be presumed to have intended that phrase to have the same meaning in the later legislation. See, e.g., District of Columbia v. Johnson & Wimsatt, 160 F. 2d 913, 915 (D.C. Cir. 1947).

The court of appeals cited 1 H. Oleck, Modern Corporation Law §3, at 13 (1958), for the proposition that, "'Principal office' means the place stated in the articles or certificate of incorporation as the address of the corporation" -- which the court recognized could be read to support either side of the argument. State of Alabama v. TVA, 636 F. 2d at 1065, pp. 53a, infra. But the court of appeals did not read far enough. Section 461, page 705 of that same edition of Oleck's treatise states:

> A domestic corporation's principal office is its headquarters, or the place where its chief business and affairs are transacted. Here, usually, is the office where its books and chief records are kept, where stockholder's meetings are held, and where its officers and directors and managers meet for the discussion and transaction of its important business; yet no one of these things is the sole or controlling test. ... (footnote to authorities omitted)

Therefore, Oleck's treatise is consistent with Fletcher's treatise, see, pp. 53a-54a, infra, and both of these important authorities on corporation law support Alabama's argument. Contrary to the conclusion of the court below, the major corporate law treatises do offer "a united front."

C. The Court of Appeals Disregarded Important Legislative History Concerning the Section 2(e) Free Residence Provision and Thereby Misinterpreted the Significance of that Provision

The court below quoted and discussed the free residence provision contained in §2(e) of the TVA Act of 1933, 16 U.S.C. §831a(e), State of Alabama v. TVA, 636 F. 2d at 1067, pp.63a-66a, infra, but overlooked some important legislative history concerning it.

Senator Norris, who co-authored the TVA Act with Representative Hill, stressed

the importance of the free residence provision in pre-enactment comments which make clear where Congress intended for TVA's headquarters to be located. When asked on the floor of the Senate about the adequacy of the salary provided in the act for TVA Board members, Senator Norris explained:

> Mr. President, I realize that there is very much disagreement as to whether we could get a man for $9,000 or $10,000 who could fill this place. I am of the opinion that we could. I do not believe there would be any difficulty. If a member of the board desires to live in Muscle Shoals --and I think it is a beautiful place to live -- he would have his house rent free, in addition to his salary. 77 Cong. Rec. 2687 (April 22, 1933) (emphasis added).

Unless Congress meant to mandate the location of TVA's actual headquarters with the principal office provision, Senator Norris' comments make no sense.

Provision of a free house amounts to a salary supplement only if the house can be used as a board member's sole or principal residence thus freeing him from house rent or mortgage payments. A free house near a purely formal office which serves merely as a depository for the service of process and which is located away from the actual headquarters would have no significant value as a salary supplement, because board members would still have to pay for a residence close to where they worked.

If Congress had merely "contemplated" that TVA's headquarters would be located near the free housing at Muscle Shoals, as the court below concluded, then Senator Norris would not have spoken with such assurance about the significance of §2(e)'s free housing provision as a salary supplement. Senator Norris did speak with

the assurance that TVA headquarters would be located near Muscle Shoals, because he, as co-author of the legislation, knew that §8(a)'s principal office provision mandated that TVA's headquarters be located there. The court below overlooked entirely Senator Norris' comments concerning the §2(e) free residence provision and thereby misinterpreted the significance of that provision.

As the court below pointed out, the initial House version of the TVA Act, sponsored by then-Representative Hill of Alabama, did expressly require that all TVA Board members reside in the vicinity of Muscle Shoals, Alabama. See, pp.64a-65a, infra. That provision, which would clearly have required that TVA's headquarters be located in the vicinity of Muscle Shoals was dropped in the conference committee in favor of the

Senate version of §2(e) which provided for free housing at Muscle Shoals, something not included in the House version. As Representative Sparkman explained:

> The House bill said, "All members shall reside in the vicinity of Muscle Shoals, Ala." but did not mention free rent. The Senate coupled the residence and free rent. When the conference agreement was reached naturally the Senate provision giving free rent as a part of the salary was accepted, the clear intention being that they should live there where the act said their work was to be. In the debate in the Senate after the bill had been adopted in the House Senator Norris was asked to explain any differences between the House bill and the one he was sponsoring. He explained that there were only two differences --transmission of power and manufacture of fertilizer. There was no difference as to the meaning to be gathered from these sections as to where the main offices should be and the directors should reside and work. ...

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Authority, 75th Cong., 3rd Sess., at 3762 (1938) (emphasis added).

The court below failed to grasp the very important point that what happened to §2(e) in the conference committee, and the reaction -- or lack of reaction-- to it strongly evidence that the principal office provision mandated that the location of TVA's headquarters be in Muscle Shoals. The House version of §2(e) would indisputably have required the location of TVA headquarters within the Muscle Shoals vicinity, because it expressly required that the directors live there. If the final version of the TVA Act, which includes the §8(a) principal office provision, does not require TVA's headquarters to be located near Muscle Shoals, then a very significant change was made in §2(e) by the conference committee -- a change which is crucial to this

lawsuit. Because the court below concluded that TVA's headquarters are not required to be located near Muscle Shoals, its decision is based at least implicitly on the assumption that such a crucial change was effected in the conference committee.

There is no indication whatsoever that the conference committee intended such a change or that anyone in Congress thought that such a change had been made. Various fundamental differences between the House and Senate bills were pointed out during the day prior to enactment of the final version of the legislation. E.g., 77 Cong. Rec. 2635, 2638-2639, 2663. (1933).

No difference concerning the location of corporate headquarters was ever mentioned. The statement of the House managers which accompanied the conference

report pointed out more than 20 differences between the House and Senate bills and discussed how they were resolved in conference, 77 Cong. Rec. 3560-3561, but not the slightest mention was made of any difference between the two bills concerning the location of TVA headquarters and the offices of the board of directors.

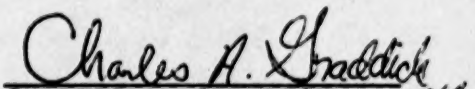
Representative Hill of Alabama, who was the author of the House bill, was also a member of the conference committee. If any change had been made by the conference committee in the net requirement that TVA locate its headquarters near Muscle Shoals, Representative Hill would certainly have noticed it, would have protested it vociferously, would have fought it, and in view of his powerful position would probably have been successful in having it changed back.

Neither Representative Hill nor Senator Norris, nor any member of the conference committee, nor any other congressmen noticed that any change had been made on the headquarters matter by the conference committee. The reason is that there was no net change in the requirement that TVA locate its headquarters in the Muscle Shoals area. The provision in the House version of §2(e) that the directors reside in the Muscle Shoals area was not essential to location of the headquarters. It was not essential because the principal office provisions, which were identical in both bills, achieved that mandate independently of §2(e). The court below disregarded this important pre-enactment legislative history and that omission contributed to its erroneous conclusion concerning the meaning of the principal office provision.

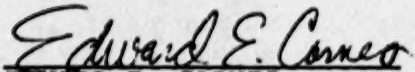
CONCLUSION

Because this case presents an important question of federal law which has not been, but should be, answered by this Court, and because the Court of Appeals decided it incorrectly, this Court should grant certiorari.

Respectfully submitted,



CHARLES A. GRADDICK
ALABAMA ATTORNEY GENERAL



EDWARD E. CARNES
ASSISTANT ALABAMA
ATTORNEY GENERAL

Counsel of Record

CERTIFICATE OF SERVICE

I, Edward E. Carnes, a member of the Bar of the Supreme Court of the United States, do hereby certify that on this the 26th day of June, 1981, I did serve copies of this Petition and the accompanying Appendices on respondent, by placing in the United States Mail, first class postage prepaid, three copies properly addressed to the following counsel of record for respondent:

Honorable Herbert S. Sanger, Jr.
General Counsel
Tennessee Valley Authority
400 Commerce Avenue
Knoxville, Tennessee 37902

I further certify that I have served all parties required to be served.

Edward E. Carnes

EDWARD E. CARNES
ASSISTANT ALABAMA
ATTORNEY GENERAL